

NTSB Order No. EA-4149

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 14th day of April, 1994

Respondent.

Docket SE-12706

C.F.R. 61.151(b) and 61.15(a)(2).<sup>2</sup> The order of revocation was premised on respondent's May 1988 conviction (on a plea of guilty) for conspiracy to distribute cocaine, interstate travel in aid of racketeering, and failure to file a currency transaction report. To his motion for summary judgment, the Administrator attached a certified copy of the conviction and the underlying indictment which indicated that on at least two occasions respondent had piloted an aircraft in furtherance of a conspiracy to transport and distribute cocaine and sums of money resulting from its sale.

For the reasons that follow, we uphold the law judge's grant of summary judgment on the section 61.15(a)(2) charge and on the sanction of revocation. We reverse the law judge's grant of

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<sup>2</sup> Section 61.151(b) provides:

**§ 61.151 Eligibility requirements: General.**

To be eligible for an airline transport pilot certificate, a person must --

\* \* \*

(b) Be of good moral character;

\* \* \*

Section 61.15(a)(2) of the FAR provides:

**§ 61.15 Offenses involving alcohol or drugs.**

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs is grounds for --

\* \* \*

(2) Suspension or revocation of any certificate or rating issued under this part.

\* \* \*

summary judgment on the section 91.151(b) charge.<sup>3</sup>

Initially, we note the Administrator's position, articulated for the first time in his reply brief, that, contrary to assertions made by FAA counsel below, this case was not brought under section 609(c) of the Federal Aviation Act ("the Act"),<sup>4</sup> which mandates revocation for certain drug-related offenses, and that the strictures of that section therefore do not apply to this case.<sup>5</sup> We have accepted the Administrator's representations in this regard and have considered this case only in the context

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<sup>3</sup> Respondent's request for oral argument is denied pursuant to 49 C.F.R. 821.48(g). We see no need for oral argument as the issues are adequately developed in the written briefs.

<sup>4</sup> Section 609(c) (49 U.S.C. 1429(c)) provides, in pertinent part:

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

<sup>5</sup> The Administrator explains that respondent's criminal activity took place primarily in 1982 and 1983, before final passage of section 609(c). Because, according to the Administrator, Congress did not intend for section 609(c) to be retrospective, the mandatory revocation provisions of that section do not apply to this case.

of section 609(a) of the Act<sup>6</sup> and the regulatory violations cited above.

Given respondent's conviction for conspiracy to distribute cocaine, a crime clearly within the purview of section 61.15(a), and his operation of an aircraft in furtherance of that criminal conspiracy -- matters which, having been established in the prior criminal case, respondent cannot now contest<sup>7</sup> -- our precedent unequivocally supports revocation of respondent's pilot certificate as the appropriate sanction.<sup>8</sup> Accordingly, since a hearing on section 61.15(a)(2) would have served no useful purpose, the law judge could properly grant summary judgment on that charge.<sup>9</sup>

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<sup>6</sup> Section 609(a) (49 U.S.C. 1429(a)) provides, in pertinent part:

If, as a result of any . . . investigation made by the Administrator, he determines that safety in air commerce or air transportation and the public interest requires, the Administrator may issue an order amending, modifying, suspending, or revoking, . . . any . . . airman certificate.  
\* \* \*

<sup>7</sup> Respondent's assertions that he was denied the opportunity to introduce evidence in this proceeding regarding the circumstances which caused him to enter into the plea agreement and his purported innocence of the crimes to which he pled guilty, are in the nature of collateral attacks on the criminal conviction, which we will not entertain.

<sup>8</sup> See Administrator v. Coulombe, 5 NTSB 2226 (1987), and cases cited in footnote 9, below.

<sup>9</sup> Summary judgment has been upheld under similar circumstances in other cases involving section 61.15(a)(2). Administrator v. Hagan, NTSB Order No. EA-3985 (1993); Administrator v. Olsen and Nelson, NTSB Order No. EA-3949 (1993); and Pinney v. NTSB, 993 F.2d 201 (10th Cir. 1993).

Respondent next argues that the Administrator abused his discretion in not waiving revocation in this case pursuant to section 609(c)(5) of the Act, which permits the Administrator to forego the mandatory revocation otherwise required by section 609(c)(1) and (2) upon request of a law enforcement official, if the Administrator determines that such a waiver will facilitate law enforcement efforts. Respondent asserts that he is actively involved in assisting various drug-related law enforcement efforts, and further states that he was assured by federal agents that his guilty plea would not jeopardize his pilot certificate.

We find section 609(c)(5) inapplicable since, as already noted above, this case was not brought under section 609(c). We note that even if this case had been brought under that statutory section, we would not review the Administrator's exercise, or failure to exercise, his purely discretionary waiver authority. Administrator v. Booher, NTSB Order No. EA-3733 (1992). Moreover, respondent has offered no evidence of any agreement or grant of immunity from federal officials which was violated by this enforcement action. Accordingly, even assuming the FAA would be bound by such an agreement,<sup>10</sup> respondent has provided no basis for altering our decision in this case.

Finally, respondent challenges the law judge's grant of summary judgment on the issue of whether he lacks the good moral

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<sup>10</sup> See Administrator v. Hagan, NTSB Order No. EA-3985 (1993) (where respondent offered no evidence to support his claim of immunity from prosecution, Board found no violation of any grant of immunity, even assuming such a grant would be binding on the FAA).

character required of an ATP certificate-holder under section 61.151(b). Even though there is some precedent to support a finding of lack of good moral character based on an ATP-holder's drug conviction,<sup>11</sup> we are unaware of any case in which such a finding was made on a motion for summary judgment. Because revocation of respondent's ATP certificate is independently supported by his drug conviction under section 61.15(a)(2), we need not reach the issue of whether that conviction also evidences a lack of good moral character.<sup>12</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied as to the section 61.15(a)(2) charge and the sanction of revocation;
2. The law judge's grant of summary judgment is affirmed on the section 61.15(a)(2) charge alone; and
3. The revocation of respondent's pilot certificate shall commence 30 days after the service of this opinion and order.<sup>13</sup>

VOGT, Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

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<sup>11</sup> Administrator v. Daughenbaugh, 4 NTSB 767 (1983); Administrator v. Dufresne, 3 NTSB 4090 (1981); Administrator v. Doppes, 2 NTSB 2306 (1976).

<sup>12</sup> See Administrator v. Grillo, NTSB Order No. EA-3994 (1993), where we similarly declined to reach a charge that the respondent lacked good moral character when revocation was independently supported by a charge of intentional falsification.

<sup>13</sup> For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).